

BLOOD TESTING AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill addresses provisions related to testing for law enforcement purposes.

Highlighted Provisions:

This bill:

- outlines the circumstances under which a peace officer may obtain a blood draw;
- and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 26-1-30**, as last amended by Laws of Utah 2015, Chapter 73
- 41-6a-520**, as last amended by Laws of Utah 2017, Chapter 181
- 41-6a-522**, as enacted by Laws of Utah 2005, Chapter 2
- 53-3-418**, as last amended by Laws of Utah 2009, Chapter 40
- 58-67-305**, as last amended by Laws of Utah 2013, Chapter 262
- 58-68-305**, as last amended by Laws of Utah 2013, Chapter 262
- 58-71-305**, as last amended by Laws of Utah 2012, Chapter 267
- 72-10-502**, as last amended by Laws of Utah 2017, Chapter 326

ENACTS:

- 77-23-213**, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **26-1-30** is amended to read:

26-1-30. Powers and duties of department.

The department shall exercise the following powers and duties, in addition to other powers and duties established in this chapter:

(1) enter into cooperative agreements with the Department of Environmental Quality to delineate specific responsibilities to assure that assessment and management of risk to human health from the environment are properly administered;

(2) consult with the Department of Environmental Quality and enter into cooperative agreements, as needed, to ensure efficient use of resources and effective response to potential health and safety threats from the environment, and to prevent gaps in protection from potential risks from the environment to specific individuals or population groups;

(3) promote and protect the health and wellness of the people within the state;

(4) establish, maintain, and enforce rules necessary or desirable to carry out the provisions and purposes of this title to promote and protect the public health or to prevent disease and illness;

(5) investigate and control the causes of epidemic, infectious, communicable, and other diseases affecting the public health;

(6) provide for the detection, reporting, prevention, and control of communicable, infectious, acute, chronic, or any other disease or health hazard which the department considers to be dangerous, important, or likely to affect the public health;

(7) collect and report information on causes of injury, sickness, death, and disability and the risk factors that contribute to the causes of injury, sickness, death, and disability within the state;

(8) collect, prepare, publish, and disseminate information to inform the public concerning the health and wellness of the population, specific hazards, and risks that may affect the health and wellness of the population and specific activities which may promote and protect the health and wellness of the population;

(9) establish and operate programs necessary or desirable for the promotion or protection of the public health and the control of disease or which may be necessary to ameliorate the major causes of injury, sickness, death, and disability in the state, except that the programs may not be established if adequate programs exist in the private sector;

(10) establish, maintain, and enforce isolation and quarantine, and for this purpose

only, exercise physical control over property and individuals as the department finds necessary for the protection of the public health;

(11) close theaters, schools, and other public places and forbid gatherings of people when necessary to protect the public health;

(12) abate nuisances when necessary to eliminate sources of filth and infectious and communicable diseases affecting the public health;

(13) make necessary sanitary and health investigations and inspections in cooperation with local health departments as to any matters affecting the public health;

(14) establish laboratory services necessary to support public health programs and medical services in the state;

(15) establish and enforce standards for laboratory services which are provided by any laboratory in the state when the purpose of the services is to protect the public health;

(16) cooperate with the Labor Commission to conduct studies of occupational health hazards and occupational diseases arising in and out of employment in industry, and make recommendations for elimination or reduction of the hazards;

(17) cooperate with the local health departments, the Department of Corrections, the Administrative Office of the Courts, the Division of Juvenile Justice Services, and the Crime Victim Reparations Board to conduct testing for HIV infection of alleged sexual offenders, convicted sexual offenders, and any victims of a sexual offense;

(18) investigate the causes of maternal and infant mortality;

(19) establish, maintain, and enforce a procedure requiring the blood of adult pedestrians and drivers of motor vehicles killed in highway accidents be examined for the presence and concentration of alcohol;

(20) provide the Commissioner of Public Safety with monthly statistics reflecting the results of the examinations provided for in Subsection (19) and provide safeguards so that information derived from the examinations is not used for a purpose other than the compilation of statistics authorized in this Subsection (20);

(21) establish qualifications for individuals permitted to draw blood pursuant to Subsection 41-6a-523(1)(a)(vi), 53-10-405(2)(a)(vi), ~~[or]~~ 72-10-502(5)(a)(vi), or 77-23-213(3)(a)(vi), and to issue permits to individuals it finds qualified, which permits may be terminated or revoked by the department;

(22) establish a uniform public health program throughout the state which includes continuous service, employment of qualified employees, and a basic program of disease control, vital and health statistics, sanitation, public health nursing, and other preventive health programs necessary or desirable for the protection of public health;

(23) adopt rules and enforce minimum sanitary standards for the operation and maintenance of:

- (a) orphanages;
 - (b) boarding homes;
 - (c) summer camps for children;
 - (d) lodging houses;
 - (e) hotels;
 - (f) restaurants and all other places where food is handled for commercial purposes, sold, or served to the public;
 - (g) tourist and trailer camps;
 - (h) service stations;
 - (i) public conveyances and stations;
 - (j) public and private schools;
 - (k) factories;
 - (l) private sanatoria;
 - (m) barber shops;
 - (n) beauty shops;
 - (o) physician offices;
 - (p) dentist offices;
 - (q) workshops;
 - (r) industrial, labor, or construction camps;
 - (s) recreational resorts and camps;
 - (t) swimming pools, public baths, and bathing beaches;
 - (u) state, county, or municipal institutions, including hospitals and other buildings, centers, and places used for public gatherings; and
 - (v) any other facilities in public buildings or on public grounds;
- (24) conduct health planning for the state;

(25) monitor the costs of health care in the state and foster price competition in the health care delivery system;

(26) adopt rules for the licensure of health facilities within the state pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act;

(27) license the provision of child care;

(28) accept contributions to and administer the funds contained in the Organ Donation Contribution Fund created in Section 26-18b-101;

(29) serve as the collecting agent, on behalf of the state, for the nursing care facility assessment fee imposed under Title 26, Chapter 35a, Nursing Care Facility Assessment Act, and adopt rules for the enforcement and administration of the nursing facility assessment consistent with the provisions of Title 26, Chapter 35a, Nursing Care Facility Assessment Act;

(30) establish methods or measures for health care providers, public health entities, and health care insurers to coordinate among themselves to verify the identity of the individuals they serve; and

(31) (a) designate Alzheimer's disease and related dementia as a public health issue and, within budgetary limitations, implement a state plan for Alzheimer's disease and related dementia by incorporating the plan into the department's strategic planning and budgetary process; and

(b) coordinate with other state agencies and other organizations to implement the state plan for Alzheimer's disease and related dementia.

Section 2. Section **41-6a-520** is amended to read:

41-6a-520. Implied consent to chemical tests for alcohol or drug -- Number of tests -- Refusal -- Warning, report.

(1) (a) A person operating a motor vehicle in this state is considered to have given the person's consent to a chemical test or tests of the person's breath, blood, urine, or oral fluids for the purpose of determining whether the person was operating or in actual physical control of a motor vehicle while:

(i) having a blood or breath alcohol content statutorily prohibited under Section 41-6a-502, 41-6a-530, or 53-3-231;

(ii) under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6a-502; or

(iii) having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6a-517.

(b) A test or tests authorized under this Subsection (1) must be administered at the direction of a peace officer having grounds to believe that person to have been operating or in actual physical control of a motor vehicle while in violation of any provision under Subsections (1)(a)(i) through (iii).

(c) (i) The peace officer determines which of the tests are administered and how many of them are administered.

(ii) If a peace officer requests more than one test, refusal by a person to take one or more requested tests, even though the person does submit to any other requested test or tests, is a refusal under this section.

(d) (i) A person who has been requested under this section to submit to a chemical test or tests of the person's breath, blood, or urine, or oral fluids may not select the test or tests to be administered.

(ii) The failure or inability of a peace officer to arrange for any specific chemical test is not a defense to taking a test requested by a peace officer, and it is not a defense in any criminal, civil, or administrative proceeding resulting from a person's refusal to submit to the requested test or tests.

(2) (a) A peace officer requesting a test or tests shall warn a person that refusal to submit to the test or tests may result in revocation of the person's license to operate a motor vehicle, a five or 10 year prohibition of driving with any measurable or detectable amount of alcohol in the person's body depending on the person's prior driving history, and a three-year prohibition of driving without an ignition interlock device if the person:

(i) has been placed under arrest;

(ii) has then been requested by a peace officer to submit to any one or more of the chemical tests under Subsection (1); and

(iii) refuses to submit to any chemical test requested.

(b) (i) Following the warning under Subsection (2)(a), if the person does not immediately request that the chemical test or tests as offered by a peace officer be administered, a peace officer shall, on behalf of the Driver License Division and within 24 hours of the arrest, give notice of the Driver License Division's intention to revoke the person's

187 privilege or license to operate a motor vehicle.

188 (ii) When a peace officer gives the notice on behalf of the Driver License Division, the
189 peace officer shall:

190 (A) take the Utah license certificate or permit, if any, of the operator;

191 (B) issue a temporary license certificate effective for only 29 days from the date of
192 arrest; and

193 (C) supply to the operator, in a manner specified by the Driver License Division, basic
194 information regarding how to obtain a hearing before the Driver License Division.

195 (c) A citation issued by a peace officer may, if provided in a manner specified by the
196 Driver License Division, also serve as the temporary license certificate.

197 (d) As a matter of procedure, the peace officer shall submit a signed report, within 10
198 calendar days after the day on which notice is provided under Subsection (2)(b), that:

199 (i) the peace officer had grounds to believe the arrested person was in violation of any
200 provision under Subsections (1)(a)(i) through (iii); and

201 (ii) the person had refused to submit to a chemical test or tests under Subsection (1).

202 (3) Upon the request of the person who was tested, the results of the test or tests shall
203 be made available to the person.

204 (4) (a) The person to be tested may, at the person's own expense, have a physician of
205 the person's own choice administer a chemical test in addition to the test or tests administered
206 at the direction of a peace officer.

207 (b) The failure or inability to obtain the additional test does not affect admissibility of
208 the results of the test or tests taken at the direction of a peace officer, or preclude or delay the
209 test or tests to be taken at the direction of a peace officer.

210 (c) The additional test shall be subsequent to the test or tests administered at the
211 direction of a peace officer.

212 (5) For the purpose of determining whether to submit to a chemical test or tests, the
213 person to be tested does not have the right to consult an attorney or have an attorney, physician,
214 or other person present as a condition for the taking of any test.

215 (6) Notwithstanding the provisions in this section, a blood test taken under this section
216 is subject to Section 77-23-213.

217 Section 3. Section **41-6a-522** is amended to read:

41-6a-522. Person incapable of refusal.

~~[Any]~~ Subject to Section 77-23-213 for blood tests, a person who is dead, unconscious, or in any other condition rendering the person incapable of refusal to submit to any chemical test or tests is considered to not have withdrawn the consent provided for in Subsection 41-6a-520(1), and the test or tests may be administered whether the person has been arrested or not.

Section 4. Section ~~53-3-418~~ is amended to read:

53-3-418. Prohibited alcohol level for drivers -- Procedures, including hearing.

(1) A person who holds or is required to hold a CDL may not drive a commercial motor vehicle in this state if the person:

(a) has sufficient alcohol in the person's body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .04 grams or greater at the time of the test after the alleged driving of the commercial motor vehicle;

(b) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to degree that renders the person incapable of safely driving a commercial motor vehicle; or

(c) has a blood or breath alcohol concentration of .04 grams or greater at the time of driving the commercial motor vehicle.

(2) A person who holds or is required to hold a CDL and who drives a commercial motor vehicle in this state is considered to have given the person's consent to a test or tests of the person's blood, breath, or urine to determine the concentration of alcohol or the presence of other drugs in the person's physical system.

(3) If a peace officer or port-of-entry agent has reasonable cause to believe that a person may be violating this section, the peace officer or port-of-entry agent may request the person to submit to a chemical test to be administered in compliance with Section 41-6a-515.

(4) When a peace officer or port-of-entry agent requests a person to submit to a test under this section, the peace officer or port-of-entry agent shall advise the person that test results indicating ~~[-.04 grams or greater alcohol concentration]~~ a violation of Subsection (1) or refusal to submit to any test requested will result in the person's disqualification under Section 53-3-414 from driving a commercial motor vehicle.

(5) If test results under this section indicate ~~[-.04 grams or greater of alcohol]~~

249 ~~concentration]~~ a violation of Subsection (1) or the person refuses to submit to any test
250 requested under this section, a peace officer or port-of-entry agent shall, on behalf of the
251 division and within 24 hours of the arrest, give the person notice of the division's intention to
252 disqualify the person's privilege to drive a commercial motor vehicle.

253 (6) When a peace officer or port-of-entry agent gives notice under Subsection (5), the
254 peace officer or port-of-entry agent shall:

255 (a) take any Utah license certificate or permit held by the driver;

256 (b) issue to the driver a temporary license certificate effective for 29 days from the date
257 of arrest;

258 (c) provide the driver, in a manner specified by the division, basic information
259 regarding how to obtain a prompt hearing before the division; and

260 (d) issue a 24-hour out-of-service order.

261 (7) A notice of disqualification issued under Subsection (6) may serve also as the
262 temporary license certificate under ~~[that subsection]~~ Subsection (6), if provided in a manner
263 specified by the division.

264 (8) As a matter of procedure, a peace officer or port-of-entry agent shall, within 10
265 calendar days after the day on which notice is provided, send to the division the person's
266 license certificate, a copy of the notice, and a report signed by the peace officer or port-of-entry
267 agent that indicates the results of any chemical test administered or that the person refused a
268 test.

269 (9) (a) A person disqualified under this section has the right to a hearing regarding the
270 disqualification.

271 (b) The request for the hearing shall be submitted to the division in a manner specified
272 by the division and shall be made within 10 calendar days of the date the notice was issued. If
273 requested, the hearing shall be conducted within 29 days after the date of arrest.

274 (10) (a) (i) Except as provided in Subsection (10)(a)(ii), a hearing held under this
275 section shall be held before the division and in:

276 (A) the county where the notice was issued; or

277 (B) a county that is adjacent to the county where the notice was issued.

278 (ii) The division may hold a hearing in some other county if the division and the person
279 both agree.

(b) The hearing shall be documented and shall determine:

(i) whether the peace officer or port-of-entry agent had reasonable grounds to believe the person had been driving a motor vehicle in violation of this section;

(ii) whether the person refused to submit to any requested test; and

(iii) any test results obtained.

(c) In connection with a hearing the division or its authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and documents.

(d) One or more members of the division may conduct the hearing.

(e) A decision made after a hearing before any number of members of the division is as valid as if the hearing were held before the full membership of the division.

(f) After a hearing under this section the division shall indicate by order if the person's CDL is disqualified.

(g) If the person for whom the hearing is held fails to appear before the division as required in the notice, the division shall indicate by order if the person's CDL is disqualified.

(11) (a) If the division disqualifies a person under this section following an administrative hearing, the person may petition for a hearing under Section 53-3-224.

(b) The petition shall be filed within 30 days after the division issues the disqualification.

(12) (a) A person who violates this section shall be punished in accordance with Section 53-3-414.

(b) (i) In accordance with Section 53-3-414, the first disqualification under this section shall be for one year, and a second disqualification shall be for life.

(ii) A disqualification under Section 53-3-414 begins on the 30th day after the date of arrest.

(13) (a) In addition to the fees imposed under Section 53-3-205 for reinstatement of a CDL, a fee under Section 53-3-105 to cover administrative costs shall be paid before the driving privilege is reinstated.

(b) The fees under Sections 53-3-105 and 53-3-205 shall be canceled if an unappealed hearing at the division or court level determines the disqualification was not proper.

(14) Notwithstanding the provisions of this section, a blood test taken under this

section is subject to Section 77-23-213.

Section 5. Section **58-67-305** is amended to read:

58-67-305. Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following individuals may engage in the described acts or practices without being licensed under this chapter:

(1) an individual rendering aid in an emergency, when no fee or other consideration of value for the service is charged, received, expected, or contemplated;

(2) an individual administering a domestic or family remedy;

(3) (a) (i) a person engaged in the sale of vitamins, health foods, dietary supplements, herbs, or other products of nature, the sale of which is not otherwise prohibited by state or federal law; and

(ii) a person acting in good faith for religious reasons, as a matter of conscience, or based on a personal belief, when obtaining or providing any information regarding health care and the use of any product under Subsection (3)(a)(i); and

(b) Subsection (3)(a) does not:

(i) allow a person to diagnose any human disease, ailment, injury, infirmity, deformity, pain, or other condition; or

(ii) prohibit providing truthful and non-misleading information regarding any of the products under Subsection (3)(a)(i);

(4) a person engaged in good faith in the practice of the religious tenets of any church or religious belief, without the use of prescription drugs;

(5) an individual authorized by the Department of Health under Section 26-1-30, to draw blood pursuant to Subsection 41-6a-523(1)(a)(vi), 53-10-405(2)(a)(vi), ~~[or]~~ 72-10-502(5)(a)(vi), or 77-23-213(3)(a)(vi);

(6) a medical assistant while working under the indirect supervision of a licensed physician and surgeon, to the extent the medical assistant:

(a) is engaged in tasks appropriately delegated by the supervisor in accordance with the standards and ethics of the practice of medicine;

(b) does not perform surgical procedures;

(c) does not prescribe prescription medications;

(d) does not administer anesthesia, anesthesia does not mean a local anesthetic for minor procedural use; and

(e) does not engage in other medical practices or procedures as defined by division rule in collaboration with the board;

(7) an individual engaging in the practice of medicine when:

(a) the individual is licensed in good standing as a physician in another state with no licensing action pending and no less than 10 years of professional experience;

(b) the services are rendered as a public service and for a noncommercial purpose;

(c) no fee or other consideration of value is charged, received, expected, or contemplated for the services rendered beyond an amount necessary to cover the proportionate cost of malpractice insurance; and

(d) the individual does not otherwise engage in unlawful or unprofessional conduct;

(8) an individual providing expert testimony in a legal proceeding; and

(9) an individual who is invited by a school, association, society, or other body approved by the division to conduct a clinic or demonstration of the practice of medicine in which patients are treated, if:

(a) the individual does not establish a place of business in this state;

(b) the individual does not regularly engage in the practice of medicine in this state;

(c) the individual holds a current license in good standing to practice medicine issued by another state, district or territory of the United States, or Canada;

(d) the primary purpose of the event is the training of others in the practice of medicine; and

(e) neither the patient nor an insurer is billed for the services performed.

Section 6. Section **58-68-305** is amended to read:

58-68-305. Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following individuals may engage in the described acts or practices without being licensed under this chapter:

(1) an individual rendering aid in an emergency, when no fee or other consideration of value for the service is charged, received, expected, or contemplated;

(2) an individual administering a domestic or family remedy;

(3) (a) (i) a person engaged in the lawful sale of vitamins, health foods, dietary supplements, herbs, or other products of nature, the sale of which is not otherwise prohibited by state or federal law; and

(ii) a person acting in good faith for religious reasons, as a matter of conscience, or based on a personal belief, when obtaining or providing any information regarding health care and the use of any product under Subsection (3)(a)(i); and

(b) Subsection (3)(a) does not:

(i) permit a person to diagnose any human disease, ailment, injury, infirmity, deformity, pain, or other condition; or

(ii) prohibit providing truthful and non-misleading information regarding any of the products under Subsection (3)(a)(i);

(4) a person engaged in good faith in the practice of the religious tenets of any church or religious belief without the use of prescription drugs;

(5) an individual authorized by the Department of Health under Section 26-1-30, to draw blood pursuant to Subsection 41-6a-523(1)(a)(vi), 53-10-405(2)(a)(vi), [or] 72-10-502(5)(a)(vi), or 77-23-213(3)(a)(vi);

(6) a medical assistant while working under the indirect supervision of a licensed osteopathic physician, to the extent the medical assistant:

(a) is engaged in tasks appropriately delegated by the supervisor in accordance with the standards and ethics of the practice of medicine;

(b) does not perform surgical procedures;

(c) does not prescribe prescription medications;

(d) does not administer anesthesia, anesthesia does not mean a local anesthetic for minor procedural use; and

(e) does not engage in other medical practices or procedures as defined by division rule in collaboration with the board;

(7) an individual engaging in the practice of osteopathic medicine when:

(a) the individual is licensed in good standing as an osteopathic physician in another state with no licensing action pending and no less than 10 years of professional experience;

(b) the services are rendered as a public service and for a noncommercial purpose;

(c) no fee or other consideration of value is charged, received, expected, or

404 contemplated for the services rendered beyond an amount necessary to cover the proportionate
405 cost of malpractice insurance; and

406 (d) the individual does not otherwise engage in unlawful or unprofessional conduct;

407 (8) an individual providing expert testimony in a legal proceeding; and

408 (9) an individual who is invited by a school, association, society, or other body

409 approved by the division in collaboration with the board to conduct a clinic or demonstration of
410 the practice of medicine in which patients are treated, if:

411 (a) the individual does not establish a place of business in this state;

412 (b) the individual does not regularly engage in the practice of medicine in this state;

413 (c) the individual holds a current license in good standing to practice medicine issued
414 by another state, district or territory of the United States, or Canada;

415 (d) the primary purpose of the event is the training of others in the practice of
416 medicine; and

417 (e) neither the patient nor an insurer is billed for the services performed.

418 Section 7. Section **58-71-305** is amended to read:

419 **58-71-305. Exemptions from licensure.**

420 In addition to the exemptions from licensure in Section 58-1-307, the following
421 individuals may engage in the described acts or practices without being licensed under this
422 chapter:

423 (1) an individual rendering aid in an emergency, when no fee or other consideration of
424 value for the service is charged, received, expected, or contemplated;

425 (2) an individual administering a domestic or family remedy;

426 (3) a person engaged in the sale of vitamins, health foods, dietary supplements, herbs,
427 or other products of nature, the sale of which is not otherwise prohibited under state or federal
428 law, but this subsection does not:

429 (a) allow a person to diagnose any human disease, ailment, injury, infirmity, deformity,
430 pain, or other condition; or

431 (b) prohibit providing truthful and nonmisleading information regarding any of the
432 products under this subsection;

433 (4) a person engaged in good faith in the practice of the religious tenets of any church
434 or religious belief, without the use of prescription drugs;

(5) a person acting in good faith for religious reasons as a matter of conscience or based on a personal belief when obtaining or providing information regarding health care and the use of any product under Subsection (3);

(6) an individual authorized by the Department of Health under Section 26-1-30, to draw blood pursuant to Subsection 41-6a-523(1)(a)(vi), 53-10-405(2)(a)(vi), ~~[or]~~ 72-10-502(5)(a)(vi), or 77-23-213(3)(a)(vi);

(7) a naturopathic medical assistant while working under the direct and immediate supervision of a licensed naturopathic physician to the extent the medical assistant is engaged in tasks appropriately delegated by the supervisor in accordance with the standards and ethics of the practice of naturopathic medicine; and

(8) an individual who has completed all requirements for licensure under this chapter except the clinical experience required under Section 58-71-302, for a period of one year while that individual is completing that clinical experience requirement and who is working under the provisions of a temporary license issued by the division.

Section 8. Section **72-10-502** is amended to read:

72-10-502. Implied consent to chemical tests for alcohol or drugs -- Number of tests -- Refusal -- Person incapable of refusal -- Results of test available -- Who may give test -- Evidence -- Immunity from liability.

(1) (a) A person operating an aircraft in this state consents to a chemical test or tests of the person's breath, blood, urine, or oral fluids:

(i) for the purpose of determining whether the person was operating or in actual physical control of an aircraft while having a blood or breath alcohol content statutorily prohibited under Section 72-10-501, or while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 72-10-501, if the test is or tests are administered at the direction of a peace officer having grounds to believe that person to have been operating or in actual physical control of an aircraft in violation of Section 72-10-501; or

(ii) if the person operating the aircraft is involved in an accident that results in death, serious injury, or substantial aircraft damage.

(b) (i) The peace officer determines which of the tests are administered and how many of them are administered.

(ii) The peace officer may order any or all tests of the person's breath, blood, urine, or

466 oral fluids.

467 (iii) If an officer requests more than one test, refusal by a person to take one or more
468 requested tests, even though the person does submit to any other requested test or tests, is a
469 refusal under this section.

470 (c) (i) A person who has been requested under this section to submit to a chemical test
471 or tests of the person's breath, blood, urine, or oral fluids may not select the test or tests to be
472 administered.

473 (ii) The failure or inability of a peace officer to arrange for any specific chemical test is
474 not a defense to taking a test requested by a peace officer, and it is not a defense in any
475 criminal, civil, or administrative proceeding resulting from a person's refusal to submit to the
476 requested test or tests.

477 (2) (a) If the person has been placed under arrest and has then been requested by a
478 peace officer to submit to any one or more of the chemical tests provided in Subsection (1) and
479 refuses to submit to any chemical test, the person shall be warned by the peace officer
480 requesting the test that a refusal to submit to the test is admissible in civil or criminal
481 proceedings as provided under Subsection (8).

482 (b) Following this warning, unless the person immediately requests that the chemical
483 test offered by a peace officer be administered, a test may not be given.

484 (3) ~~Any~~ A person who is dead, unconscious, or in any other condition rendering the
485 person incapable of refusal to submit to any chemical test or tests is considered to not have
486 withdrawn the consent provided for in Subsection (1), and the test or tests may be administered
487 whether the person has been arrested or not.

488 (4) Upon the request of the person who was tested, the results of the test or tests shall
489 be made available to that person.

490 (5) (a) Only the following, acting at the request of a peace officer, may draw blood to
491 determine its alcohol or drug content:

492 (i) a physician;

493 (ii) a registered nurse;

494 (iii) a licensed practical nurse;

495 (iv) a paramedic;

496 (v) as provided in Subsection (5)(b), emergency medical service personnel other than

497 paramedics; or

498 (vi) a person with a valid permit issued by the Department of Health under Section
499 26-1-30.

500 (b) The Department of Health may designate by rule, in accordance with Title 63G,
501 Chapter 3, Utah Administrative Rulemaking Act, which emergency medical service personnel,
502 as defined in Section 26-8a-102, are authorized to draw blood under Subsection (5)(a)(v),
503 based on the type of license under Section 26-8a-302.

504 (c) Subsection (5)(a) does not apply to taking a urine, breath, or oral fluid specimen.

505 (d) The following are immune from civil or criminal liability arising from drawing a
506 blood sample from a person who a peace officer has reason to believe is flying in violation of
507 this chapter if the sample is drawn in accordance with standard medical practice:

508 (i) a person authorized to draw blood under Subsection (5)(a); and

509 (ii) if the blood is drawn at a hospital or other medical facility, the medical facility.

510 (6) (a) The person to be tested may, at the person's own expense, have a physician of
511 the person's own choice administer a chemical test in addition to the test or tests administered
512 at the direction of a peace officer.

513 (b) The failure or inability to obtain the additional test does not affect admissibility of
514 the results of the test or tests taken at the direction of a peace officer, or preclude or delay the
515 test or tests to be taken at the direction of a peace officer.

516 (c) The additional test shall be subsequent to the test or tests administered at the
517 direction of a peace officer.

518 (7) For the purpose of determining whether to submit to a chemical test or tests, the
519 person to be tested does not have the right to consult an attorney or have an attorney, physician,
520 or other person present as a condition for the taking of any test.

521 (8) If a person under arrest refuses to submit to a chemical test or tests or any
522 additional test under this section, evidence of any refusal is admissible in any civil or criminal
523 action or proceeding arising out of acts alleged to have been committed while the person was
524 operating or in actual physical control of an aircraft while under the influence of alcohol, any
525 drug, or combination of alcohol and any drug.

526 (9) The results of any test taken under this section or the refusal to be tested shall be
527 reported to the Federal Aviation Administration by the peace officer requesting the test.

(10) Notwithstanding the provisions of this section, a blood test taken under this section is subject to Section 77-23-213.

Section 9. Section **77-23-213** is enacted to read:

77-23-213. Blood testing.

(1) As used in this section:

(a) "Law enforcement purpose" means duties that consist primarily of the prevention and detection of crime and the enforcement of criminal statutes or ordinances of this state or any of this state's political subdivisions.

(b) "Peace officer" means those persons specified in Title 53, Chapter 13, Peace Officer Classification.

(2) A peace officer may require an individual to submit to a blood test for a law enforcement purpose only if:

(a) the individual or legal representative of the individual with authority to give consent gives oral or written consent to the blood test;

(b) the peace officer obtains a warrant to administer the blood test; or

(c) a judicially recognized exception to obtaining a warrant is established by the Utah Court of Appeals, Utah Supreme Court, Court of Appeals of the Tenth Circuit, or the Supreme Court of the United States.

(3) (a) Only the following, acting at the request of a peace officer, may draw blood to determine the blood's alcohol or drug content:

(i) a physician;

(ii) a registered nurse;

(iii) a licensed practical nurse;

(iv) a paramedic;

(v) as provided in Subsection (3)(b), emergency medical service personnel other than a paramedic; or

(vi) a person with a valid permit issued by the Department of Health under Section 26-1-30.

(b) The Department of Health may designate by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which emergency medical service personnel, as defined in Section 26-8a-102, are authorized to draw blood under Subsection (3)(a)(v),

559 based on the type of license under Section 26-8a-302.

560 (c) The following are immune from civil or criminal liability arising from drawing a
561 blood sample from a person who a peace officer requests, for law enforcement purposes, if the
562 sample is drawn in accordance with standard medical practice:

563 (i) a person authorized to draw blood under Subsection (3)(a); and

564 (ii) if the blood is drawn at a hospital or other medical facility, the medical facility.